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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	UNITED STATES OF AMERICA and)	Case No. CV 11-05097 DDP (RZx)
12	PEOPLE OF THE STATE OF)	
13	CALIFORNIA, ex rel.)	
14	CALIFORNIA DEPARTMENT OF)	
15	FISH AND GAME and CALIFORNIA)	
16	REGIONAL WATER QUALITY)	AMENDED ORDER DENYING DEFENDANT'S
17	CONTROL BOARD, CENTRAL COAST)	MOTION TO DISMISS
18	REGION,)	
19)	
20	Plaintiff,)	
21)	
22	v.)	
23)	
24	HVI CAT CANYON, INC., f/k/a)	
25	GREKA OIL & GAS, INC.,)	
26)	
27	Defendants.)	
28)	

Presently before the court is Defendant HVI Cat Canyon, Inc. ("Greka")'s Motion to Dismiss Plaintiffs' First, Sixth, Seventh, Eighth, Ninth, and Tenth Claims for Relief. Having considered the submissions of the parties and heard oral argument, the court denies the motion and adopts the following order.

I. Background

Defendant owns or operates several oil and gas production facilities near Santa Barbara, California. (Complaint ¶¶ 57-59.)

1 Between 2005 and 2009, oil was spilled or released from Defendant's
2 facilities into nearby waters on twenty-one separate occasions.¹
3 (Compl. ¶¶ 65, 68, 91, 94, 97, 104, 133-136.) Plaintiffs the
4 United States of America ("United States") and the People of the
5 State of California ("State") jointly filed the instant action for
6 civil penalties, injunctive relief, recovery costs, and other
7 damages. (Compl. ¶ 1.)

8 The United States brings five claims under the Clean Water Act
9 ("CWA") 33 U.S.C. § 1251 et seq. and Oil Pollution Act of 1990, 33
10 U.S.C. § 2701 et seq. The State brings five claims under the
11 California Water Code § 13000 et seq. and the California Fish and
12 Game Code §5650 et seq., asserting that this court has supplemental
13 jurisdiction over the state law claims.² Defendant now moves to
14 dismiss the United States' first claim, brought under Section 311
15 of the CWA, 33 U.S.C. § 1321(b).³ Defendant also moves to dismiss
16 all five state law claims.

17 **II. Legal Standard**

18 A complaint will survive a motion to dismiss when it contains
19 "sufficient factual matter, accepted as true, to state a claim to
20 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
21 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,

23 ¹ Some, but not all, of the spills are alleged to have
24 violated both federal and state law.

25 ² The Complaint alleges that the spills identified in
26 paragraphs 131 and 133-136 violated state law. (Compl. ¶ 32.) Of
these, only the spills described in paragraph 131 are also alleged
to have violated federal law. (Id. ¶¶ 119, 120.)

27 ³ The Complaint alleges that the spills described in
28 paragraphs 65-70 and 91-106 of the Complaint violated Section 311
of the Clean Water Act. (Compl. ¶ 181.)

1 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
2 "accept as true all allegations of material fact and must construe
3 those facts in the light most favorable to the plaintiff." Resnick
4 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
5 need not include "detailed factual allegations," it must offer
6 "more than an unadorned, the-defendant-unlawfully-harmed-me
7 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
8 allegations that are no more than a statement of a legal conclusion
9 "are not entitled to the assumption of truth." Id. at 679. In
10 other words, a pleading that merely offers "labels and
11 conclusions," a "formulaic recitation of the elements," or "naked
12 assertions" will not be sufficient to state a claim upon which
13 relief can be granted. Id. at 678 (citations and internal
14 quotation marks omitted).

15 "When there are well-pleaded factual allegations, a court
16 should assume their veracity and then determine whether they
17 plausibly give rise to an entitlement of relief." Id. at 679.
18 Plaintiffs must allege "plausible grounds to infer" that their
19 claims rise "above the speculative level." Twombly, 550 U.S. at
20 555. "Determining whether a complaint states a plausible claim for
21 relief" is a "context-specific task that requires the reviewing
22 court to draw on its judicial experience and common sense." Iqbal,
23 556 U.S. at 679.

24 **III. Discussion**

25 A. Clean Water Act Section 311

26 Section 311 of the Clean Water Act prohibits the discharge of
27 oil into "the navigable waters of the United States, adjoining
28 shorelines, or into or upon the waters of the contiguous zone . . .

1 in such quantities as may be harmful" 33 U.S.C. §
2 1321(b)(3) (emphasis added). Other portions of the CWA use
3 slightly different language. Section 301(a), for example,
4 prohibits the "addition of any pollutant to navigable waters from
5 any point source." 33 U.S.C. § 1362(12) (emphasis added).

6 The CWA defines the term "navigable waters" as "the waters of
7 the United States, including the territorial seas." 13 U.S.C. §
8 1362(7). Defendant argues that this definition does not apply to
9 Section 311 because the terms "navigable waters" and "navigable
10 waters of the United States" have separate and differing meanings.
11 Defendant posits that, the CWA definition of "navigable waters"
12 notwithstanding, "navigable waters of the United States" means
13 "traditionally navigable waters." Defendant argues that while the
14 bodies of water into which Defendant spilled oil may be "navigable
15 waters," those bodies are not "navigable waters of the United
16 States," and that the United States' Section 311 claim must
17 therefore be dismissed.⁴

18 The Sixth Circuit addressed, and rejected, this same argument
19 in United States v. Ashland Oil & Transp. Co., 504 F.2d 1317 (6th
20 Cir. 1974). The Ashland Oil court explained that the CWA, then
21 known as the Federal Water Pollution Control Act ("FWPCA"),
22 reflected "Congress' clear intention as revealed in the Act itself
23 . . . to effect marked improvement in the quality of the total
24 water resources of the United States." Ashland Oil, 504 F.2d at
25 1323. The court cited Congressional statements explaining that the
26 CWA "defines the term 'navigable waters' broadly for water quality

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28 ⁴ The parties do not dispute that the bodies of water at issue
here are not "traditionally navigable waters."

1 purposes. It means all 'the waters of the United States' in a
2 geographical sense. It does not mean 'navigable waters of the
3 United States' in the technical sense as we sometimes see in some
4 laws." Id. (citing 118 Cong.Rec. 33756-57 (1972)). The court
5 therefore concluded that the FWPCA's definition of "navigable
6 waters" applied to the term "navigable waters of the United States"
7 used in Section 311, because "any other reading would violate the
8 specific language of the definition . . . and turn a great
9 legislative enactment into a meaningless jumble of words." Id. at
10 1325.

11 This court agrees. Defendant asserts that Ashland Oil
12 conflicts with earlier law, which, prior to the CWA, "interpreted
13 the phrase 'navigable waters of the United States' in the [CWA]'s
14 predecessor statutes to refer to interstate waters that are
15 'navigable in fact' or readily susceptible of being rendered so."
16 Rapanos v. United States, 547 U.S. 715, 723-24 (2006) (plurality
17 opinion). As the Supreme Court has recognized, however, the 1972
18 Amendments to the FWPCA "were viewed by Congress as a 'total
19 restructuring' and 'complete rewriting' of the existing water
20 pollution legislation" City of Milwaukee v. Illinois and
21 Michigan, 451 U.S. 304, 317 (1981). Whether Congress used the term
22 "navigable waters of the United States" to refer to some other
23 meaning prior to the CWA is, therefore, not relevant to determining
24 Congressional intent with respect to that term as used in the
25 FWPCA/CWA. As explained by the Ashland Oil court, Congress clearly
26 did not intend to use the term "navigable waters of the United
27 States" in the CWA in the narrow, technical sense advocated by
28 Defendant, but rather in a broad sense geared toward effecting

1 marked improvement in the quality of the country's total water
2 resources.

3 B. State Claims

4 The State alleges in the Seventh Claim for Relief that
5 Defendant violated California Water Code § 13385(d). California
6 Water Code § 13385 imposes liability under state law for, among
7 other things, violations of the CWA. Cal. Water Code §
8 13385(a)(5). Section 13385 requires the Attorney General to
9 petition the superior court to impose civil liability on a polluter
10 "upon request of a regional board or the state board." Cal. Water
11 Code § 13385(b)(2). Relying on this language, Defendant argues
12 that the State cannot assert its claim in federal court. This
13 court disagrees. Section 13385 does not contain a jurisdiction
14 stripping provision, nor does the Attorney General's mandate to
15 file in state court upon request of a state or local board suggest
16 that the Attorney General's enforcement powers may only be
17 exercised in state court at the direction of a board.⁵

18 Defendant also argues that this court does not have
19 supplemental jurisdiction over any of the State's five claims
20 (Claims Five through Ten).⁶ This court may exercise supplemental
21 jurisdiction over claims that are sufficiently related to claims
22 over which this court has original jurisdiction that they are part

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24 ⁵ This reasoning applies with equal force to the nearly
25 identical language of California Water Code § 13350(g), which forms
26 the basis of the State's Sixth Claim for Relief. California Water
27 Code § 13350(g) states "The Attorney General, upon request of a
28 regional board or the state board, shall petition the superior
court"

⁶ California v. United States Dep't. of Navy, 845 F.2d 222
(9th Cir. 1988), cited by Defendant, concerns original
jurisdiction, not supplemental jurisdiction.

1 of the same case or controversy. 28 U.S.C. § 1367. The state and
2 federal claims need only share a "common nucleus of operative
3 fact," such they would ordinarily be tried in a single proceeding.
4 United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). Subject to
5 the "common nucleus" constraint, this court may exercise pendent
6 party jurisdiction over claims involving parties who do not
7 themselves bring independent federal claims. Mendoza v. Zirkle
8 Fruit Co., 301 F.3d 1163, 1174 (9th Cir. 2002).

9 Here, the State's claims are based on the same oil spills at
10 issue in the United States' federal claims, as well as certain
11 additional spills. The core facts of all the claims presented
12 revolve around Defendant's release of oil from facilities near
13 Santa Barbara, California into nearby waters. It is likely that
14 the same witnesses will describe the oil spills underlying the
15 federal claims as well as those spills underlying purely state
16 claims. Furthermore, every oil spill will likely be relevant to
17 both the state and federal claims to the extent that penalties for
18 both categories of claims depend to some extent on the Defendant's
19 history of conduct. Because all ten claims brought here share a
20 common core of facts and are factually related to one another, this
21 court can and should exercise supplemental jurisdiction over the
22 State's five state law claims.

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1 **IV. Conclusion**

2 For the reasons stated above, Defendant's Motion to Dismiss
3 the First, Sixth, Seventh, Eighth, Ninth, and Tenth Claims for
4 Relief is DENIED.

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6 IT IS SO ORDERED.
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9 Dated: January 16, 2013
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11 DEAN D. PREGERSON
12 United States District Judge
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